UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/747
15 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 747

Cases No. 637: KREMER
No. 642: GOURDON

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 17 July 1995, Henri Julien Kremer, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 7 November 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested, under article 12 of the Statute of the Tribunal, the interpretation of Judgement No. 656, rendered by the Tribunal on 21 July 1994;

Whereas the application contained pleas which read (in part) as follows:

> "4. After having recognized, in paragraph XX of its Judgement, that I was entitled to the repatriation grant, the Tribunal ordered, in paragraph XXII, that I should be paid that grant but did not, however, make any mention of interest.
>
> 5. The Tribunal may have considered that payment of such interest was self-evident, ... If that is the case, I should like to request that the Tribunal be so kind as to make this interpretation clear and state what interest rate is applicable.

6. If, however, the Tribunal omitted to take a decision on that part of my submission inadvertently, I should like to request that it ... take a supplementary decision on this issue."

Whereas the Respondent filed his answer on 12 January 1996;

Whereas, on 17 July 1995, Alain André Marie Gourdon, a former member of the Joint Inspection Unit (JIU), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 12 October 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested, under article 12 of the Statute of the Tribunal, the interpretation of Judgement No. 656, rendered by the Tribunal on 21 July 1994:

Whereas the application contained pleas which read (in part) as follows:

"While the Tribunal did not say so, it seems self evident that ... the repatriation grant should carry interest from 1 January 1991 to 28 June 1995, at four per cent per annum ... [as requested in the initial application].

Although the Tribunal in paragraph XXII [of its Judgement No. 656] awarded payment of the repatriation grant, it made no explicit mention of interest payments.

[The Applicant requests therefore that the Tribunal:]

(a) give an explicit answer to the question of the payment of interest;

...

(b) and agree that the amount requested by the Applicant be paid as interest ..." (Translation by the Tribunal)

Whereas the Respondent filed his answer on 1 December 1995;

Whereas the Applicant filed written observations on 3 January 1996;

Whereas the facts in the cases have been set forth in Judgement No. 656.

Whereas the Applicants' principal contention is:

The Tribunal acknowledged that the Applicants were entitled to the repatriation grant but omitted to mention payment of interest, as requested by the Applicants in their pleas.

Whereas the Respondent's principal contention is:

Payment of interest is not an automatic right but requires an explicit order of the Tribunal. Payment of interest was not ordered by the Tribunal and is not appropriate because the Respondent's refusal to pay the repatriation grant was a reasonable exercise of his discretion. It was a good faith interpretation of the applicable texts, an interpretation previously upheld by the Tribunal in its Judgement No. 408, Rigoulet (1987). In these circumstances, damages, in the form of interest, are not justified.

The Tribunal, having deliberated from 2 to 15 July 1996, now pronounces the following judgement:

I. The Tribunal, in Judgement No. 656 of 21 July 1994, ordered the Respondent to pay the Applicants the repatriation grant they had claimed. In compliance with this order, the Respondent paid the Applicants the amount of the grant, but did not pay interest thereon.

II. The issue now raised by the Applicants is whether the Tribunal, in its Judgement No. 656, intended that the Applicants should be entitled, in addition to the repatriation grant, to the payment of interest thereon. The issues presented in both cases are identical, and the Tribunal, therefore, considers the claims of the two Applicants jointly, as it did in Judgement No. 656.

III. The Applicants contend that, as they had sought payment of interest, as well as the payment of the repatriation grant in their pleas, it follows that, payment of interest is implicit in the Tribunal's order, or that the Tribunal erred in not including it in the order. That error should be rectified.

IV. The Tribunal holds that adding interest to its awards is not an automatic right. It is for the Tribunal to decide, taking into account all the circumstances of the case, whether interest should be awarded. Payment of interest must be specifically ordered and cannot be considered as implicit in the Tribunal judgements. In this case, the Tribunal, in the exercise of its discretion, decided not to award interest on the repatriation grant.

V. For the foregoing reasons, the applications are rejected.

(Signatures)

Samar SEN
President

Francis SPAIN
Member

Mayer GABAY
Member

Geneva, 15 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary

UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/748
15 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 748

Case No. 852: ZEGHOUANI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 7 November 1994, Micheline Zéghouani, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 March 1995, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal:

> "To [a] order the Secretary-General of the United Nations to pay me the repatriation grant to which I am entitled in accordance with article 109.5 of the Staff Rules, as well as the interest [accrued] thereon from the date of my separation from service ... [b] the sums corresponding to home leave that were verbally refused to me ..."

Whereas the Respondent filed his answer on 19 May 1995;

Whereas the Applicant filed written observations on 30 June 1995;

Whereas the facts in the case are as follows:

The Applicant, an internationally recruited French national, entered the service of the United Nations on 13 September 1981 and

served thereafter at the United Nations Office at Geneva (UNOG), until her retirement on 30 June 1994. During her service with UNOG, she resided in Ferney-Voltaire, France.

On 27 June 1994, the Applicant wrote to the Personnel Service that, as she had been internationally recruited in Paris in 1981, she requested payment of the repatriation grant and amounts corresponding to her home leave entitlements since 1981. In a reply dated 6 July 1994, a Personnel Officer, Personnel Administration Section, informed the Applicant, "in accordance with Staff Rule 109.5(i) you are not eligible for payment of repatriation grant due to the fact that you resided in your home country while performing official duties".

In a memorandum dated 18 July 1994, the Applicant requested the Secretary-General to review the decision to deny her the repatriation grant and entitlement to home leave. She also requested permission to submit an appeal directly to the Tribunal. In a reply dated 11 August 1994, the Assistant Secretary-General for Human Resources Management advised the Applicant, "Since the facts in this case are not in dispute and since your claim raises only issues of law, you may submit your case directly to the Tribunal without prior consideration by a joint appeals body.".

On 21 July 1994, Tribunal held in Judgement No. 656, Kremer and Gourdon, that French nationals residing in France while working at the United Nations Office at Geneva were entitled to the repatriation grant. On 10 March 1995, the Secretary-General reported this Judgement to the General Assembly, "so that it can, if it wishes, take appropriate legislative action in the light of the Tribunal's interpretation of the Staff Regulations in a manner that has invalidated long-standing policy". On 6 April 1995, in resolution 49/241, the General Assembly amended the Staff Regulations to ensure that "the repatriation grant and other expatriate benefits be limited to staff who both work and reside in a country other than their home country". On 26 April 1995, the

Under-Secretary-General for Administration and Management informed the Officer-in-Charge of the Division of Administration in UNOG, "you are hereby instructed to pay repatriation grant to eligible staff members who lived in France, worked in Geneva, and have separated during the period from 21 July 1994, the date of the Judgement No. 656, through 6 April 1995, the date of the amendment to Annex IV to the Staff Regulations."

On 22 March 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

Judgement No. 656 entitles the Applicant to payment of the repatriation grant. For similar reasons, she should have been granted home leave and should therefore be compensated for this entitlement.

Whereas the Respondent's principal contentions are:

1. The General Assembly, in promulgating new Staff Regulations in the light of Judgement No. 656, authorized payment of the repatriation grant to staff retiring between the date of the Judgement and the date of the new Regulations. The Applicant will be paid the repatriation grant, and her claim is therefore moot.

2. The Applicant's claim to be paid compensation for alleged home leave entitlements is time-barred pursuant to Staff Rule 103.15.

The Tribunal, having deliberated from 12 to 15 July 1996, now pronounces the following judgement:

I. The Tribunal notes that the Respondent has paid the repatriation grant to the Applicant. Accordingly, the Applicant's plea for payment of the grant is no longer at issue. It remains for

the Tribunal to consider the Applicant's claim for compensation for home leave entitlements, dating back to 1981.

II. The Respondent contends that these claims are time-barred. The Applicant argues that, inasmuch as she was treated by the Respondent as not entitled to home leave and travel costs, Staff Rule 103.15 was not applicable to her. This argument lacks legal validity. The meaning of the rule is perfectly clear and the words in Rule 103.5 "payment to which he or she is entitled" must be construed as meaning that, in order to receive a retroactive payment to which a staff member believes he or she is entitled, he or she must claim it within a year of the denial of such an entitlement.

III. There is no evidence in the record that the Applicant asked for, and was refused, home leave during the years in question. She apparently did not claim any reimbursement, because she did not believe she would be entitled to it. After Judgement No. 656, Kremer and Gourdon, of 20 July 1994, became known to her, she decided to claim financial entitlement to home leave. The Tribunal finds that, by this time, her claim was time-barred, except with respect to the final home leave period. With regard to this period of home leave for 1994, the Tribunal finds that the Applicant was not entitled to it, because, under the provisions of Staff Rule 105.3(b)(ii), staff are entitled to home leave only if their service "is expected by the Secretary-General to continue: a. at least six months beyond the date of his or her return, from any proposed home leave; ..." Since the Applicant retired two days after submitting her request, she did not meet the conditions for home leave entitlement in 1994.

IV. There remains the question of interest on the repatriation grant. The Tribunal holds, as it did in its Judgement No. 747, Kremer and Gourdon, dated 15 July 1996, that the claim of interest on the repatriation grant should be rejected, for the reasons set forth in that Judgement.

V. The application is therefore rejected in its entirety.

(Signatures)

Samar SEN
President

Francis SPAIN
Member

Mayer GABAY
Member

Geneva, 15 July 1996

R. María VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/749
16 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 749

Case No 834 : DEMERS DEAR

Against : The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, on 4 October and 14 December 1994, Edith Demers Dear, the former spouse of the late Thomas John Dear, a participant in the United Nations Joint Staff Pension Fund, hereinafter referred to as UNJSPF, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 January 1995, the Applicant, after making the necessary corrections, again filed an application, requesting the Tribunal to order the Respondent to pay her:

> "the ... amount calculated according to the scale of the UNJSPF and retroactive to the death of Mr. Dear: April 17, 1993, [as] the widow's benefit normally awarded."

Whereas the Respondent filed his answer on 28 April 1995;

Whereas the Applicant submitted communications on 25 May, 26 August, and 31 October 1995;

Whereas the Respondent submitted a reply to the Applicant's communications on 29 November 1995;

Whereas the facts in the case are as follows:

The Applicant was married in 1960 to Thomas John Dear, who served as a staff member of the International Civil Aviation Organization (ICAO) from 1956 to 1965, and from 1970 to 1971. From 1972 to 1975, when he retired, Mr. Dear served as a staff member of the International Telecommunication Union (ITU). The Applicant and Mr. Dear were divorced in 1982. He subsequently remarried. He died on 17 April 1993.

On 25 October 1993, the Applicant wrote to the Secretary of the UNJSPF, requesting to be the beneficiary of a survivor's benefit derived from her former husband, as his widow could not receive such a benefit because she had married him after his retirement. She, on the other hand, had been married to him for 24 years, throughout his service with ICAO and ITU.

In a reply dated 17 November 1993, the Secretary of the United Nations Joint Staff Pension Board (UNJSPB) informed the Applicant as follows:

> "... We regret to confirm that, notwithstanding the reasons and circumstances described in your letter, you are not entitled to any benefits from the Pension Fund. Under article 34 of the UNJSPF Regulations, a benefit becomes payable to the surviving spouse of a deceased retired Fund participant only if the spouse had been married to the participant when he separated from service and remained married to him until his death. Consequently, your potential survivor's benefit ended when your marriage to the late Mr. Dear was terminated by divorce in 1982.
>
> The Secretary of the Pension Board cannot authorize any disbursements from the Pension Fund that would not be made in strict compliance with the Pension Fund's Regulations and Rules. Furthermore, there is no person or entity that would have the power or discretion to authorize payments from the Pension Fund that would be made in deviation from its applicable Regulations and Rules.

> We understand the arguments advanced in your letter and sympathize with your difficult financial circumstances. To our sincere regret we must nevertheless respond negatively to your letter, as no other answer was possible under the Pension Fund's Regulations and Rules."

After an exchange of correspondence with the Secretary of the UNJSPB, on 7 February 1994, the Applicant confirmed that she wished her claim to be reviewed by the Standing Committee of the UNJSPB (the Standing Committee).

On 28 July 1994, the Standing Committee considered the Applicant's appeal. On 14 September 1994, the Secretary of the UNJSPB informed the Applicant, inter alia, as follows:

> "...
>
> I regret to advise you that, at its ... meeting [held on 28 July 1994], the Standing Committee decided to uphold the decision taken by the Secretary of the Board, on the grounds that you were not entitled to a survivor's benefit under the provisions of article 34 of the Pension Fund's Regulations, as adopted by the United Nations General Assembly."

On 17 January 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant has a right to a survivor's benefit following her former husband's death.

2. Customs have changed since the UNJSPF Rules and Regulations were formulated, and they should be adapted to meet the needs of changing societies.

Whereas the Respondent's principal contentions are:

1. The Applicant does not have standing before the Tribunal. The appeal is therefore not receivable.

2. Article 34 (a) of the UNJSPF's Regulations sets forth two requirements for entitlement to a widow's benefit. The Applicant did not satisfy the second requirement, that she remain married to the participant until his death.

3. Acceptance of the Applicant's plea would require substantive and retroactive amendment of the current Regulations.

The Tribunal, having deliberated from 3 to 16 July 1996, now pronounces the following judgement:

I. In 1960, the Applicant married Thomas John Dear, who had been a staff member of ICAO and ITU. The couple divorced in 1982, six years after Mr. John Dear's retirement. Mr. Dear remarried. He died in 1993.

The Applicant claims that she is entitled to a surviving spouse's benefit from the UNJSPF. In support of her claim, she notes that Mr. Dear's second wife did not receive this benefit, because she was not married to him at the time of his separation from service.

Should her claim be denied, the Applicant requests financial assistance from the UNJSPF in view of the hardship which she is suffering.

The Respondent submits that, as the Applicant does not fit into any of the categories listed in article 2.2 of the Tribunal's Statute, the Applicant has no standing before the Tribunal.

II. To determine whether the Applicant has standing before the Tribunal under article 2.2, the Tribunal must first establish whether she has any rights deriving from her former husband's participation in the UNJSPF.

III. The Respondent contends that the Applicant is not entitled to the benefits which she claims on the basis of article 34 (a) of the Regulations which reads as follows:

> "A widow's benefit shall, subject to article 41 and to (b) below, be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to him at the date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death."

In the Tribunal's view, this text is conclusive. The Applicant's claim is without foundation under the UNJSPF's Regulations. The Applicant clearly has no rights relating to the UNJSPF and, therefore, she has no standing before the Tribunal under the provisions of article 2.2 of its Statute.

IV. The Tribunal cannot enter into the question of the fairness or unfairness of the provisions of article 34 (a), nor will it venture an opinion on whether this provision should be altered, as the Applicant requests. The Tribunal merely affirms that article 34 (a) is in force and has been correctly applied by the UNJSPF.

V. In this respect, the Tribunal recalls its Judgement No. 685, Loquinov, paragraph VII, (1994) in which it stated that "while not unaware of or unsympathetic to the problems ... faced by the Applicant ..., [the Tribunal] is unable to find that in this particular case they would legally permit derogation from the application of the Regulations and Administrative Rules of the Fund."

VI. For the foregoing reasons, the Tribunal finds that the application is not receivable.

(Signatures)

Samar SEN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 16 July 1996

R. María VICIEN-MILBURN
Executive Secretary

UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/750
16 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 750

Cases Nos. 806: SANBAR
813: SARROUH
816: SALTI
821: GUIRAGOSSIAN
831: AL-BANA
832: HUMOUDA

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Francis Spain; Ms. Deborah Taylor Ashford;

Whereas, on 12 July 1994, Jobran Daoud Sanbar, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), hereinafter referred to as "the Agency", filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 August 1994, the Applicant Sanbar, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia, to order:

"(a) The reinstatement of [his] expatriate status.

(b) The payment of compensation towards the financial losses which [he has] been incurring, through no fault of [his], since 13 April 1982, the date on which [he] acquired the Austrian nationality. ..."

Whereas the Respondent filed his answer on 31 August 1995;

Whereas the Applicant Sanbar filed written observations on 15 October 1995;

Whereas, on 5 August 1994, Said Sarrouh, a staff member of UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 29 September 1994, the Applicant Sarrouh, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

> "... to reinstate my expatriate status with retroactive effect as well as confirm my entitlement for payment of repatriation grant."

Whereas the Respondent filed his answer on 25 July 1995;

Whereas the Applicant Sarrouh submitted additional information on 13 May 1996;

Whereas, on 17 October 1994, Hamzeh Salti, a former staff member of UNRWA, filed an application requesting the Tribunal, inter alia:

> "[to reconsider] UNRWA's administrative decision with a view to paying me repatriation grant under the provisions of UNRWA's rule 29 of the Annex to Area Staff Rules applicable to area staff members whose duty station is Vienna, Austria."

Whereas the Respondent filed his answer on 31 July 1995;

Whereas, on 8 August 1994, Boghos Guiragossian, a staff member of UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 8 November 1994, the Applicant Guiragossian, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

> "(A)... to reinstate my expatriate status and pay all amounts due to me with retroactive effect from September 1983.

(B)... to confirm my entitlement for payment of repatriation grant.

..."

Whereas the Respondent filed his answer on 17 July 1995;

Whereas, on 28 June 1996, the Applicant Guiragossian submitted observations and, on 1 July 1996, he submitted additional observations, together with a document;

Whereas, on 5 August 1994, Nawaf Al-Bana, a staff member of UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 12 December 1994, the Applicant Al-Bana, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

"... to reinstate my expatriate status with retroactive effect as well as confirm my entitlement for payment of repatriation grant."

Whereas the Respondent filed his answer on 29 September 1995;

Whereas, on 5 August 1994, Samia Humouda, a staff member of UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 30 December 1994, the Applicant Humouda, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

"... to reinstate my expatriate status with retroactive effect as well as confirm my entitlement for payment of repatriation grant.".

Whereas the Respondent filed his answer on 29 September 1995;

Whereas the Applicant Humouda filed written observations on 15 December 1995;

Whereas, on 8 July 1996, the Tribunal put questions to the Respondent, to which he provided answers on 10 July 1996;

Whereas the facts in the cases are as follows:

The Applicant Sanbar entered the service of UNRWA on 18 March 1968, as a Data Processing Programmer at grade 10, step 1, on a temporary indefinite appointment as an area staff member at UNRWA Headquarters in Beirut, Lebanon. On 14 July 1978, the Applicant was transferred to the relocated UNRWA Headquarters in Vienna, Austria. On 1 February 1995, he was appointed to the international staff post of Auditor, at the P-4 level, and was transferred to the relocated UNRWA Headquarters in Amman, Jordan.

Following several temporary assistance assignements, the Applicant Sarrouh entered the service of UNRWA on 16 September 1974, as a Senior Clerk, at grade 8, step 1, on a temporary indefinite appointment as an area staff member, at UNRWA Headquarters in Beirut, Lebanon. On 5 February 1976, the Applicant was transferred to Amman, Jordan, and on 1 October 1978, he was transferred to the relocated UNRWA Headquarters in Vienna, Austria, as Chief Clerk in the Office of the Director of Health. In 1985, he was reassigned to the post of Assistant Educational Statistician in the Department of Education. In 1993, he was appointed to the post of Finance Assistant (Accounts), and with effect from 9 March 1995, to the post of Senior Finance Assistant. On 31 May 1996, the Applicant Sarrouh separated from service on early voluntary retirement.

The Applicant Salti entered the service of UNRWA on 1 August 1952, as a Clerk "B" (Finance Division) on a temporary indefinite appointment, at grade 6, in the UNRWA Field Office in Damascus, Syria. He served in Damascus successively in the posts of Clerk, Accountant, Field Welfare Officer and Field Personnel Officer. With effect from 16 January 1982, he was transferred to UNRWA

Headquarters in Vienna, Austria, as Assistant Personnel Officer at the grade 14 level. On 1 October 1984, he was transferred back to Damascus as Deputy Field Relief Services Officer, at the grade 16 level. On 1 March 1986, the Applicant was appointed to the post of Field Personnel Officer. On 1 May 1988, he was transferred back to UNRWA Headquarters, as Personnel Officer at the grade 15 level. On 30 June 1994, the Applicant Salti separated from service upon retirement.

The Applicant Guiragossian entered the service of UNRWA on 30 November 1974, as an Audit Assistant "C", on a temporary indefinite appointment, at grade 10, step 6, as an area staff member at UNRWA Headquarters in Beirut, Lebanon. On 4 July 1978, he was transferred to the relocated UNRWA Headquarters in Vienna, Austria. On 1 June 1990, he was assigned to the post of Auditor at grade 15, and on 1 September 1993, he was appointed to the post of Contributions Officer, grade 16. With effect from 16 July 1996, the Applicant Guiragossian was appointed to the post of Budget Officer, as an international staff member, at the relocated UNRWA Headquarters in Gaza.

The Applicant Al-Bana entered the service of UNRWA on 1 September 1969, as a Carpenter "A", at grade 3, step 1, on a temporary indefinite appointment at UNRWA Headquarters in Beirut, Lebanon. On 2 August 1978, he was transferred to the relocated UNRWA Headquarters in Vienna, Austria. He received successive promotions to the posts of Clerk, Computer Operator and Help Desk Technical Assistant at the grade 12 level. On 30 October 1995, the Applicant Al-Bana was offered a one year assignment on temporary duty to the relocated UNRWA Headquarters in Gaza.

The Applicant Humouda entered the service of UNRWA on 12 March 1962, as a Typist, at the grade 6, step 1 level, on a

temporary indefinite appointment at UNRWA Headquarters in Beirut, Lebanon. She served thereafter in different posts as a Secretary, eventually being promoted to grade 10. On 4 August 1978, she was transferred to the relocated UNRWA Headquarters in Vienna, Austria, as Secretary "A" Budget Division, Department of Finance. On 17 May 1996, the Applicant Humouda separated from service on early voluntary retirement.

In a circular dated 1 July 1981, the Acting Director of Personnel and Administration informed UNRWA Headquarters staff that "the Commissioner-General and the Deputy Commissioner-General have entered into discussions with the Jordanian Government on the return of UNRWA's main headquarters to the area of operations and, in particular, to Amman." The circular stated the Commissioner-General's intent to accept the Jordanian Government's offer to relocate UNRWA Headquarters in Amman and set forth a tentative timetable for the move to facilitate planning of staff with regard to registration for schooling of their children.

On 6 July 1981, the Applicant Sanbar requested the Austrian Government to award him citizenship, which he was granted on 13 April 1982. On 4 May 1982, he informed the Chief, Personnel Services Division, of his nationality change. At the same time, he requested that he retain his expatriate status and Palestinian nationality.

In a reply dated 10 May 1982, the Chief, Personnel Services Division, informed the Applicant Sanbar that the Agency could not agree to this request, stating "While fully appreciating your reasons for having acquired Austrian nationality, I must nevertheless draw your attention to Rule 8 of the 'Annex to the Area Staff Rules'. The intent thereof is for a staff member with non-local status to lose this status and hence his or her entitlements to non-local benefits (...) when he or she acquires the nationality of the country of the duty station." Nevertheless, he informed the

Applicant Sanbar, that on an exceptional basis, "you may retain your assignment allowance and, upon separation, your entitlement to repatriation travel and unaccompanied shipment to Beirut."

On 9 October 1982, the Applicant Guiragossian acquired Austrian nationality. In September 1983, he so informed the Administration. On 16 September 1983, the Chief, Personnel Services Division advised the Applicant that, in accordance with Rule 8 of the Annex to the Area Staff Rules, "your expatriate status together with all the benefits related thereto have been suspended, ... with effect from 1 September 1983 ... Exceptionally, however, I am pleased to inform you that you may retain, upon separation, your entitlement to repatriation travel and unaccompanied shipment to Beirut."

On 25 August 1983, the Applicant Al-Bana informed a Personnel Officer that he had acquired Austrian nationality on 23 August 1983. In a letter dated 6 September 1983, a Personnel Officer informed the Applicant Al-Bana that in accordance with Rule 8 of the Annex to the Area Staff Rules, "a staff member with non-local status loses this status and hence his entitlements to non-local benefits (e.g. non-resident's allowance, area leave, etc.) when he acquires the nationality of the country of the duty station ... Exceptionally, I am pleased to inform you that you may retain, upon separation, your entitlement to repatriation travel and unaccompanied shipment to the place of repatriation entitlement."

In August 1985, Rule 29 of the Annex to the Area Staff Rules was introduced, reading as follows:

> "Staff members, other than those locally recruited, who are separated from service by reason of termination, retirement, death or disability shall be entitled to a repatriation grant in respect of himself of herself and any eligible dependants as defined in Rule 15 of this Annex in accordance with the following provisions:
>
> A. An amount equivalent to 30 days of travel subsistence allowance for the staff member and one

> half that amount in respect of each eligible dependant at the appropriate rate for the place of repatriation.
>
> ...
>
> 4. No payments shall be made to a staff member who abandons his or her post or to any staff member, who is residing at the time of separation in his or her home country while performing official duties, ..."

In a memorandum dated 8 May 1987, to the Director of Personnel through the Chairman of the Area Staff Union, the Applicants Sanbar, Al-Bana and four other staff members, all Palestinians, requested consideration of their stateless status prior to acquiring Austrian nationality, suggesting that a distinction could be drawn "between one who voluntarily gives up his nationality in favour of another and one who has no nationality to give up in the first place".

On 24 January 1989, the Applicant Sanbar wrote to the Director of Personnel to ask whether he would re-gain expatriate status if he gave up Austrian nationality and obtained another nationality. In a reply dated 12 September 1989, the Chief, Personnel Services Division, informed the Applicant Sanbar that the Agency would not recognize a new nationality, if he gave up Austrian nationality, noting that "your family ties here would remain the dominant consideration and any non-Austrian nationality would not be recognized for status purposes".

On 14 February 1992, the Applicant Humouda informed a Personnel Officer that she had acquired Austrian nationality on 13 February 1992. In a letter dated 3 March 1992, a Personnel Officer informed the Applicant Humouda that in accordance with Rule 8 of the Annex to the Area Staff Rules, "you will lose your expatriate status and your related entitlements like non-resident's allowance, education grant and travel and area leave ... However,

upon separation you may retain your entitlement to repatriation travel and removal costs to the place of repatriation entitlement."

In a memorandum dated 2 March 1992, the Applicant Sarrouh informed a Personnel Officer that he had acquired Austrian nationality, with effect from 28 February 1992. In a reply dated 3 March 1992, the Personnel Officer informed the Applicant Sarrouh that in accordance with the Area Staff Rules, "you will lose your expatriate status and your related entitlements like non-resident's allowance, education grant and travel and area leave. However, upon separation you may retain your entitlement to repatriation travel and removal costs to the place of repatriation entitlement."

On 25 January 1993, the Applicants Sanbar, Sarrouh, Guiragossian, Al-Bana, Humouda and nine other staff members who had acquired Austrian nationality wrote to the Commissioner-General, through the Chairman of the Area Staff Union, expressing concern that the decision to deny them expatriate benefits "abolishes an acquired right retroactively." They stated "we are all still Palestinians in the diaspora" and "acquisition of any nationality was made only for acquiring travel documents ..."

In replies dated 22 February 1993, the Director of Personnel informed the Applicants Sanbar, Sarrouh, Guiragossian, Al-Bana and Humouda that "a repatriation grant cannot be paid to you if you separate from UNRWA service at Headquarters (Vienna) as an Austrian national residing in Austria."

On 1 April 1993, the Commissioner-General announced to all Area Staff Members at Headquarters, in Transmittal Memorandum No. 16, that, with effect from 1 January 1993, Rule 29 of the Annex to the Area Staff Rules, concerning the repatriation grant, had been amended. The amendment provided that the amount of the repatriation grant would be proportional to the years of continuous service of the staff member away from his or her home country, bringing the rule into line with the provisions of the International Staff Regulations and Rules.

On 8 April 1993, the Applicants Sanbar, Sarrouh, Guiragossian, Al-Bana, Humouda and nine other staff members wrote to the Director of Personnel, through the Chairman of the Area Staff Union, questioning the decision which had been conveyed to them on 22 February 1993. In replies dated 21 May 1993, the Director of Administration and Human Resources informed the Applicants that the decision would be maintained and that, as Austrian nationals residing in Austria, they would not be entitled to payment of a repatriation grant in the event of separation from the Agency. He added that the Commissioner-General would agree to direct submission of their appeals to the Tribunal.

On 16 June, 17 June, and 18 June 1993 respectively, the Applicants Sarrouh, Guiragossian, Al-Bana, Sanbar and Humouda lodged appeals with the Joint Appeals Board (JAB).

On 8 December 1993, the Applicant Salti, whose scheduled retirement on 31 December 1993 had been deferred until 30 June 1994, informed the Administration that he had been granted Austrian nationality with effect from 25 November 1993. In a letter dated 6 January 1994, the Chief, Personnel Services Division advised the Applicant Salti that, consequently, in accordance with Rule 8 of the Annex to Area Staff Rules, "you will lose your expatriate status and all your related entitlements; i.e. area leave, assignment allowance, repatriation grant and removal costs". However, he informed the Applicant Salti that "upon separation the Agency will exceptionally pay for your travel to your place of original recruitment Damascus, Syria and for removal, within established limits, of your household goods to Damascus, Syria".

On 20 April 1994, the JAB submitted its reports to the Commissioner-General on the appeals of the Applicants Sarrouh, Guiragossian, Al-Bana and Humouda and, on 12 May 1994, on the appeal of the Applicant Sanbar. The JAB's recommendation in each of these cases reads as follows:

"Recommendation

... In view of the foregoing, and without prejudice to any further oral or written submissions to any party the Appellant may deem pertinent, the Board finds that the Administration acted within the framework of the standing rules and regulations. However, the Board notes the provisions of paragraph 7 of Rule 29 of the Annex to the Area Staff Rules, and recommends that the Commissioner-General may wish to consider exercise of his discretion under that paragraph, subject to the provisions of paragraph 4 of the same Rule."

On 11 May 1994, the Commissioner-General transmitted a copy of the JAB reports to the Applicants Sarrouh, Guiragossian, Al-Bana and Humouda informed them as follows:

"You will note that the Board found that, in denying your claim for repatriation grant when you retire from the Agency's service, the Administration acted within the framework of standing regulations and rules. The Board also concluded that the provisions of paragraph 7 of Rule 29 of the Annex to the Area Staff Rules applied in your case, which is tantamount to an acceptance of the Administration's position. As you know, that position is based upon the fact that Austria became your home country when you relinquished your expatriate status upon taking out Austrian citizenship, and therefore you are precluded under the Rule from receiving repatriation grant when you retire from the Agency's service in Austria.

As to the exercise of discretion recommended by the Board under the Rule, after careful and thorough consideration I am convinced that I have no such discretion in the circumstances of your case. As a former expatriate staff member, you did indeed serve at a duty station outside what was then your home country. However, that service was in the same location which subsequently became your home country when you relinquished your expatriate status and took out Austrian citizenship, i.e. Austria. Therefore, the discretionary provision of the Rule has no application in your case, since it is clearly intended to apply in circumstances which are entirely different from your own.

In light of the above, while fully appreciating the motives which may well have influenced you in taking out Austrian citizenship, I must also recognize that you have no

legal entitlement to payment of repatriation grant under Agency rules, and I am therefore obliged to dismiss your appeal."

On 12 May 1994, the Commissioner-General transmitted a copy of the JAB report to the Applicant Sanbar and informed him as follows:

"You will note that the Board found that, in denying your claim for reinstatement of expatriate status and compensation for the financial losses which you maintain you have incurred since the date you acquired Austrian nationality, the Administration acted within the framework of standing regulations and rules. With regard to the repatriation grant aspect, the Board also concluded that the provisions of paragraph 7 of Rule 29 of the Annex to the Area Staff Rules applied in your case, which is tantamount to acceptance of the Administration's position. As you know, that position is based upon the fact that Austria became your home country when you relinquished your expatriate status upon taking out Austrian citizenship, and therefore you are precluded under the Rule from receiving repatriation grant when you retire from the Agency's service in Austria.

As to the exercise of discretion recommended by the Board under the Rule, after careful and thorough consideration I am convinced that I have no such discretion in the circumstances of your case. As a former expatriate staff member, you did indeed serve at a duty station outside what was then your home country. However, that service was in Austria, which subsequently became your home country when you relinquished your expatriate status and took out Austrian citizenship, and where you continued to service until the present. Therefore, the discretionary provision of the Rule has no application in your case, since it is clearly intended to apply in circumstances which are entirely different from your own.

I find no basis for your allegation that you did not acquire Austrian nationality of your own volition, but rather under duress from the Administration through its General Staff Circular dated 1 July 1981. I therefore do not accept your claim that the Agency should reinstate your expatriate status and compensate you for the financial losses you say you have incurred since the date you acquired Austrian

nationality, including loss of entitlement to repatriation grant. Based upon the Joint Appeals Board's findings, I therefore dismiss your appeal."

In a letter dated 12 May 1994, a Personnel Officer advised the Applicant Salti of his separation entitlements on retirement, which included repatriation travel and related benefits but not the repatriation grant. In a reply dated 26 May 1994, the Applicant Salti noted that his entitlement to the repatriation grant had not been included and submitted a claim for payment of the repatriation grant, under Rule 29 of the Annex to the Area Staff Rules. In a reply dated 30 May 1994, the Personnel Officer informed the Applicant Salti that a number of staff members who had acquired Austrian nationality, as he had, had made similar requests and had been advised that "as Austria became your home country when you acquired Austrian nationality, under the provisions of paragraph (7) of Rule 29 of the Annex to the Area Staff Rules, a repatriation grant cannot be paid to you if you separate from UNRWA service at Headquarters (Vienna) as an Austrian national residing in Vienna.".

On 13 June 1994, the Applicant Salti requested the Director of Administration and Human Resources to reconsider the decision not to pay him the repatriation grant. In a reply dated 22 June 1994, the Officer-in-Charge of the Department of Administration and Human Resources informed him that the decision that "a repatriation grant cannot be paid to you if you separate from UNRWA service at Headquarters (Vienna) as an Austrian national residing in Austria" would be maintained. In a letter dated 20 July 1994, the Applicant Salti sought the Commissioner-General's agreement to submit his appeal concerning the non-payment of the repatriation grant directly to the Tribunal. On 10 August 1994, the Director of Administration and Human Resources advised the Applicant Salti of the Commissioner-General's agreement to direct submission of his appeal to the Tribunal.

On 17 August, 29 September, 17 October, 8 November, 12 December and 30 December 1994 respectively, the Applicants Sanbar, Sarrouh, Salti, Guiragossian, Al-Bana and Humouda filed with the Tribunal the applications referred to earlier.

Whereas the Applicants' principal contentions are:

1. The Applicants chose to acquire Austrian nationality in order to facilitate their travel and that of their families. It was not their intention to establish permanent residence in Austria.

2. Under Rule 29 of the Annex to the Area Staff Rules, the Applicants are entitled to the repatriation grant upon separation. An amendment to Rule 29, following the Applicants' acquisition of Austrian nationality, cannot operate retroactively to take away their acquired rights.

3. The Administration has acknowledged the expatriate status of the Applicants by granting them entitlement to removal and travel expenses upon separation from service.

4. The Applicant Sanbar was misled by the Agency's memorandum of 1 July 1981, which stated clearly that UNRWA Headquarters would relocate to Amman, Jordan within one year. On this basis, he applied for Austrian nationality.

5. The Applicant Humouda has dual nationality and closer ties to Lebanon than Austria. It is her intention to return to Lebanon upon her retirement.

Whereas the Respondent's principal contentions are:

1. The Agency's decision was taken in accordance with the relevant provisions of the Area Staff Rules.

2. The Applicants, who acquired Austrian nationality prior to the introduction of the repatriation grant, were never entitled to the grant. The other Applicants' own actions of acquiring Austrian nationality rendered them ineligible for the repatriation grant.

3. There is no link between the Applicants' entitlement to removal and travel expenses and the repatriation grant. Entitlement to removal and travel expenses is determined by the staff member's expatriate status on appointment, not on separation.

4. The amendment to Rule 29 does not substantively change the Rule, but was intended merely to clarify its meaning and intent.

5. The Applicant Sanbar's decision to acquire Austrian nationality was not suggested or induced by the conduct of the Respondent. The memorandum of 1 July 1981 stated that the Agency might move to Amman, subject to certain conditions being fulfilled.

5. Issues relating to the dual nationality of the Applicant Humouda were not raised at the JAB and are therefore not properly before the Tribunal.

The Tribunal, having deliberated from 5 to 16 July 1996, now pronounces the following judgement:

I. As the Applicants' claims are based in large part on common contentions of law, the Tribunal has decided to consider their cases jointly, addressing in one judgement these common contentions, followed by reference to certain individual aspects of the Applicants' claims.

II. A central issue in all of the applications is the entitlement of the Applicants to a repatriation grant upon separation from service. The repatriation grant for Area Staff members was first introduced in August 1985, as Rule 29 of the Annex to the Area Staff Rules. This Rule, which established an entitlement upon repatriation to a payment equivalent to 30 days of travel subsistence allowance, also provided that a staff member "residing at the time of separation in his or her home country while performing official duties" was not entitled to payment of the

grant. Rule 29 was amended in January 1993 to make the amount of the repatriation grant proportional to length of service, thereby greatly enhancing the amount of the repatriation grant for staff members with long service. The exclusion of staff members residing in their home country at the time of separation was retained in Rule 29, and the 1993 amendment added language to the Rule defining "home country" as a staff member's country of nationality. The Respondent contends that the addition of this definition constituted a clarification and was not a substantive change in the meaning of the term "home country". The Tribunal accepts this contention.

III. The Applicants all joined the service of UNRWA prior to its relocation to Vienna. Upon relocation, the Applicants acquired expatriate status. At various times they each applied for and were granted Austrian nationality. At the time of acquisition of this nationality, the Applicants were informed by the Respondent that they had lost their entitlement to expatriate benefits, including the right to payment of a repatriation grant. They were further informed that they would retain their entitlement upon separation to repatriation travel and removal costs. As Austrian citizens, the Applicants were deemed by the Respondent to be residing in their "home country" and thereby fell within the exclusion set forth in Rule 29. In the context of other rules, the Tribunal has upheld the interpretation of "home country" as one's country of nationality (Judgement No. 703, Larsen (1995)) as a reasonable interpretation. Similarly, in the context of Rule 29, the Tribunal considers that the Respondent's interpretation is a reasonable one.

IV. The Applicants argue that their exclusion from entitlement to the repatriation grant constitutes an infringement of an acquired right. The Tribunal does not agree. Several of the Applicants acquired Austrian citizenship before the repatriation grant was introduced for Area Staff members in 1985. They cannot be said to

have had any acquired right at this time because the right in question did not exist. With regard to those Applicants who acquired the right to a repatriation grant as a result of the introduction of Rule 29 in 1985, who subsequently lost this right, the Tribunal notes that it was their own actions which led to the loss of the right. The right to a repatriation grant is set forth in Rule 29, together with certain conditions which govern its enjoyment. When the Applicants chose to acquire Austrian citizenship, they acquired a new "home country" which placed them within the exception to Rule 29, and they no longer qualified for the repatriation grant. By changing their status, the Applicants relinquished their right to expatriate benefits, including the repatriation grant. Had they wished to retain this right, they could have done so. In giving up the right, presumably they acquired other benefits associated with Austrian citizenship that other Area Staff members, who retained the right to expatriate benefits, did not enjoy. It would be unfair to these other Area Staff members to allow the Applicants to benefit both from expatriate status and from the rights and benefits of citizenship in their country of residence.

V. The Applicants claim that they acquired Austrian citizenship solely for the purpose of acquiring travel documents and that they did not intend to make Austria their home country. The consequences of the decision to acquire Austrian citizenship are established by the applicable staff rules and regulations. These rules and regulations, including Rule 29, do not provide for consideration of motives. Neither can the Tribunal enter into consideration of motivation for acquiring nationality. The Applicants maintain that their particular situation differentiates them from other staff members who acquire a new nationality. The Tribunal is sympathetic to the unusual circumstances of the Applicants, and the difficulties they have faced. However, the Tribunal cannot establish an

exception based on such consideration, for that would require legislative or administrative action which is beyond the purview of this Tribunal.

VI. With respect to individual claims made by the Applicants Sanbar and Humouda, the Tribunal makes the following observations and findings:

VII. The Applicant Sanbar contends that his decision, in 1982, to acquire Austrian citizenship was taken in reliance on the contents of an official circular issued in 1981, which stated that UNRWA Headquarters would relocate to Amman, Jordan within one year. He claims that in the absence of such a circular, he would not have made this decision, which deprived him of expatriate benefits for twelve years, as well as the benefit of the repatriation grant. The circular in question, dated 1 July 1981, stated that "the Commissioner-General intends to accept the offer of the Jordanian Government" to relocate the Agency to Jordan. The circular further stated that "a final decision on location of headquarters" would be determined on the basis of financial considerations. In an effort to provide guidance to staff members with children in school, the circular also stated that "present plans foresee that the main headquarters of UNRWA should be transferred to Amman during the school holidays in the summer of 1982" and that a move might be required before this time. The Tribunal does not find that this circular conclusively stated that UNRWA would be relocating. It was intended to inform staff members of developments in the discussions. It was not an official notice of transfer. The Applicant Sanbar contends that he obtained Austrian nationality "under duress" on the basis of this circular. The Tribunal does not consider the circumstances in which the Applicant found himself to constitute

duress. The Tribunal accepts the Respondent's contention that the Applicant's decision to obtain Austrian citizenship was a voluntary one.

VIII. The Applicant Humouda claims that she holds dual nationality and that her Lebanese nationality should be recognized as the nationality of her "home country". The Respondent notes that the Applicant Humouda has not ever made this formal claim for recognition of her Lebanese nationality. The Tribunal is of the view that the Applicant Humouda should have raised the issue of her dual nationality when she first informed the Administration that she had acquired Austrian citizenship. There is no decision by the Administration on this claim, and therefore it is not properly before the Tribunal and cannot be considered.

IX. For the foregoing reasons, the applications are rejected.

(Signatures)

Samar SEN
President

Francis SPAIN
Member

Deborah Taylor ASHFORD
Member

Geneva, 16 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary